

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CRIMINAL CASE NO. 1:17-cr-00044-MR**

UNITED STATES OF AMERICA, )  
                                )  
Plaintiff,                 )  
                                )  
vs.                         )                           **O R D E R**  
                               )  
JOSHUA DALE FULLER,     )  
                               )  
Defendant.                 )  
                               )  
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**THIS MATTER** is before the Court on the Defendant’s “Motion Requesting Court to Compel Government to Return Confiscated Property Not Forfeited” [Doc. 87].

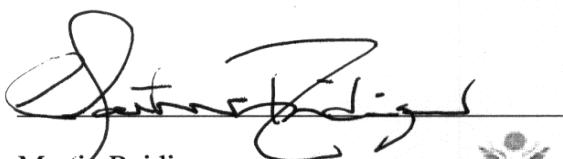
The Defendant seeks the return of a cellphone that he contends was subpoenaed as part of the criminal investigation in this case. [Id.]. In response to the Defendant’s motion, the Government states that the referenced cellphone is not in the possession of the Federal Government but rather is in the possession of the Madison County Sheriff’s Office. The Government further states that it will forward a copy of the Defendant’s motion to that office and request that the phone be returned as requested by the Defendant. [Doc. 88].

Courts have recognized that a motion for return of property is proper only if the property is in the possession of the United States. See United States v. Marshall, 338 F.3d 990, 995 (9th Cir. 2003) (“the government cannot be forced to return property that it never possessed.”); see also Lowrie v. United States, 824 F.2d 827, 829 (10th Cir. 1987); United States v. White, 718 F.2d 260, 261 (8th Cir. 1983); United States v. Rodriguez, No. 1:06-cr-00004-MR, 2009 WL 3698408, at \*1 (W.D.N.C. Nov. 2, 2009). As there is no indication in the record that the Defendant’s property is in the possession of federal authorities, his motion for the return of this property must be denied. As noted by the Government, however, the Defendant may seek the return of the cellphone from the Madison County Sheriff’s Office.

**IT IS, THEREFORE, ORDERED** that the Defendant’s “Motion Requesting Court to Compel Government to Return Confiscated Property Not Forfeited” [Doc. 87] is **DENIED**.

**IT IS SO ORDERED.**

Signed: November 6, 2018



Martin Reidinger  
United States District Judge

